



With compulsory financing comes mandatory transparency

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Content

The general principle	3
A concret issue	3
Transparency of labour organizations elsewhere in the world	4
The use of mandatory dues for purposes other than labour relations	5
Transparency to rebuild trust	6

Summary

This brief supports the idea of increased financial transparency of labour organizations on the basis of the general principle that with compulsory financing comes a moral obligation of transparency, contrary to a voluntary financing. In addition to this position of principle, some evidence shows that there are important drawbacks in the current situation to which higher transparency standards are the appropriate answer. This is moreover a similar approach to what exists in other free and democratic societies. These higher transparency standards should also establish that financing of other purposes than labour relations should never be compulsory. Such measures of transparency, in our view, would allow labour organizations the means to reestablish trust of their members and Canadian citizens.

With compulsory financing comes mandatory transparency

The general principle

Public and private organizations are generally distinguished by the fact that the former are answerable to all taxpayers because they are the ones who finance them, either directly or indirectly, but almost always by obligation. Only the government can legitimately impose financial obligations on its citizens. Private organizations, on the contrary, must rely on the voluntary exchange of goods and services in return for payment, or on their powers of persuasion. They can never force someone to give them money. Public organizations, because they are publicly funded, are also saddled with a duty of increased transparency since they are responsible for using their funding judiciously.

Although labour organizations belong to the private domain, their financing does not fulfill the usual characteristics of private organizations. The legal system grants them powers that are quite unusual in this regard. Collective agreements, backed up by statutory laws and court decisions, actually require all unionized employees to pay union dues, whether or not they belong to the union that represents them. These dues are usually deducted directly from their paychecks by their employer, who then hands these sums over to the unions. Some unions then pass some of this money along to federative labour organizations. This situation grants them the equivalent of a power to tax.

Compulsory dues bestow upon unions an indirect power to tax.

Financial transparency is an essential requirement in the management of public funds. It is through this mechanism that taxpayers protect themselves

from the risks of arbitrary power, corruption, embezzlement of public funds and loss of responsibility that can arise, even within a public administration at the service of citizens. In the case of labour organizations, financed through an indirect power to tax and through tax benefits, this transparency would therefore also constitute an appropriate tool.

Compulsory dues bestows upon unions an indirect power to tax. This power granted by the *Labour Code* is coupled with preferential tax treatment. The main fiscal levers that the Quebec government adopted to the benefit of labour organizations are:

1. the tax credit for union dues;
2. the tax exemption for strike pay;
3. tax credits for contributions to labour sponsored funds.

A concrete issue

Beyond the general principle justifying mandatory transparency, there are concrete problems that need fixing. The extent of these problems is unknown since labour organizations are not yet transparent, even though their revenues in dues have been estimated around \$800 million per year in Quebec and in the billions in Canada. Some examples suggest that bill C-377 would tackle a real issue.

In December 2010, it was revealed that the *Fraternité inter-provinciale des ouvriers en électricité* (FIPOE) had made a loan of \$5 million to Tony Accurso, a construction magnate at the centre of various allegations, found guilty of fraud and formally charged of corruption and breach of trust. FIPOE's director indicated that such practices would be examined.

In September 2011, *Le Devoir* revealed that labour organizations were buying advertising space at the convention of the New Democratic Party, possibly violating political parties financing rules. The NDP has since returned these sums. The interesting point in this matter is that the journalist, Hélène Buzzetti, figured out the existence of those transactions by using publicly available information on the web site of the Department of Labour, in the United States, even though it concerned Canadian labor organizations and a Canadian political party. The difference is that United States has higher transparency standards for labour organizations than Canada.

Transparency of labour organizations elsewhere in the world

In the United States, the transparency obligations provided for by the *Labor Management Reporting and Disclosure Act* (LMRDA, also known as the *Landrum-Griffin Act*) are based on the disclosure of detailed reports in order to supervise the financial relationships and activities between labour organizations leaders and employees, employers, and labour relations consultants. American labour organizations are required to answer questionnaires from the

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Office of Labor-Management Standards of the federal Department of Labor regarding their financial situation. Their answers are then made public. Labour organizations must also disclose all of their political contributions.

Thanks to the LMRDA, the American justice system obtained 877 indictments for corruption and embezzlement from 2001 to 2007. As a result, \$103 million were returned to labour organizations whose dues had been used inappropriately. Financial disclosure concerning in particular union funds held in trust, strike funds and training funds of all kinds was especially useful for identifying and trying to counter acts of corruption.

In France, the financial transparency of labour organizations has undergone new development with the adoption of the *Loi portant rénovation de la démocratie sociale et réforme du temps de travail*. The clauses of this law have been coming into effect gradually since 2009. After doubts were expressed regarding the quality of the governance of certain labour organizations, this law established new financial transparency obligations. Mainly, labour organizations must respect strict accounting standards and make their financial statements available online.

It is important to specify that in France, labour organizations are not only financed by union dues, but also receive government subsidies. Dues represent from 20% to 60% of the revenues of the five main labour federations.

For all labour organizations, the new law means an obligation to produce annual financial statements and to ensure their "publicity." What's more, above a certain amount of financial resources, each labour organization must name an auditor. The internal approval procedures for unions' financial statements must also meet new requirements. Interestingly, this transparency

obligation was featured on a list of common demands of union and business organizations presented to the government during the debates that preceded the adoption of the law.

Germany is somewhat of a special case. The legal framework for labour organizations there is minimal, allowing them significant autonomy. In particular, relations between a labour organization and its members are basically only governed by the statutes of the organization. The federal government audits the fiscal declarations of labour organizations, as for any association. A labour organization must justify its activities in order to continue to enjoy a tax exemption, namely having to pay neither corporate taxes nor sales taxes on most of the activities financed by union dues.

Labour organizations voluntarily set up internal and external control systems in reaction to scandals and financial losses in the 1980s and 1990s. The internal review focuses on the legality of expenses and their advisability. The accounts, or financial statements, are also audited by external inspectors in many cases. Auditors can just as easily inspect organizations connected to unions as unions themselves. Their annual reports are made public through a union publication and are presented to members during general assemblies every four years.

The use of mandatory dues for purposes other than labour relations

The logic of the Rand formula doesn't apply to spending for causes, since not all employees benefit.

Union dues are not used exclusively to finance labour relations. Examples abound of labour organizations using employees' dues for other purposes, like supporting various ideological causes. Yet not only does the logic of the Rand formula not apply to spending for these causes,

since not all employees benefit, but furthermore, some see their values trampled by this process, however "democratic" it may be.

In the *Lavigne* case, numerous cases were illustrated. Unions lent their support to provincial or federal political parties when financing rules allowed it, or disbursed funds to foreign unions, like a health care workers' union in Nicaragua. More recently, students associations in Quebec received financial support from labour organizations during their boycott. This sum of more than \$60,000 served not to better workers' conditions or further their rights, but rather to a political fight that profoundly divided Quebec's society. Such funds were taken from all dues-paying members, including those who were opposed to the boycott.

The opaqueness of labour organizations finances makes it impossible to know what portion of their expenses is devoted to ends other than labour relations. We cannot know which causes they support, how much is spent supporting them, and in the end, what proportion of compulsory dues finance activities with no connection to labour relations.

Concretely, it was established that the following labour organizations expenses were not among those activities linked to labour relations and could therefore not be subject to compulsory financing:

- the election of candidates to public service, including contributions to a political party, political organization or candidate;

- lobbying (with the exception of lobbying directly connected with the ratification or the creation of a collective agreement);
- contributions to charitable and educational organizations;
- activities intended to promote an ideology;
- illegal strikes;
- a corresponding part of the cost of union publications devoted to covering the subjects mentioned above or other subjects not directly related to workers.

When it is difficult to determine which expenses are for activities directly related to labour organizations responsibilities, it was established in United States and Europe that the union bears the burden of proof to show that an expense financed by all dues really is related to collective bargaining, contract management or grievance resolution.

Currently, the Rand formula generates revenue that labour organizations are free to use as they see fit. In the *Lavigne* case, the Supreme Court of Canada concluded in a majority ruling that the Rand formula did not violate the right to freedom of expression in the context of a free and democratic society. However, this ruling was made in 1991. Today, in just about every democratic country in the world, it is forbidden for a labour organization to spend the money collected through compulsory union dues to support ideological or social causes without the individual consent of its members. This is the case in the United States, in Australia and in New Zealand, as well as in the European Union ever since a ruling of the European Court of Human Rights, handed down in 2007. The fact that some of the justices in the *Lavigne* ruling stated that

Canada is the exception among the world's free and democratic societies. the Rand formula was a *Charter* violation, one that they then deemed justified in a free and democratic society, does not mean that over 20 years later the Court will be of the same view, especially knowing that Canada is clearly the exception among the world's free and democratic societies.

Transparency to rebuild trust

Given the allegations circulated in the media against certain labour organizations in the construction sector in Quebec, including charges of links with organized crime and entrepreneurs suspected of corruption, the French and German unions' strategy of respecting financial transparency obligations, whether legal or self-imposed, could prove to be an attractive path for their colleagues here. It is also worth noting that the requirement to disclose financial information is sometimes linked to the tax benefits enjoyed by labour organizations, as in Germany, while here, they enjoy regulatory and tax benefits and without having to reveal anything at all of a financial nature. Finally, the law in effect in the United States, being more exhaustive, leads to concrete results in terms of convictions and of restitution of sums embezzled by unscrupulous individuals.